

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0778-PST-E TCEQ ID: RN103894564 CASE NO.: 35868
RESPONDENT NAME: UNITED PETROLEUM TRANSPORTS, INC.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: United Petroleum Transports, 12926 Montana Avenue, El Paso, El Paso County with a fuel delivery at 6401 South Desert Boulevard, El Paso, El Paso County

TYPE OF OPERATION: Fuel distributor

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 15, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Gregory Price, President, UNITED PETROLEUM TRANSPORTS, INC., 4312 South Georgia Place, Oklahoma City, Oklahoma 73129
 Mr. Andy Walker, Vice President Risk Management, UNITED PETROLEUM TRANSPORTS, INC., 4312 South Georgia Place, Oklahoma City, Oklahoma 73129
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 18, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 2, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>Failure to control displaced vapors by a vector control or vapor balance system during the transfer of gasoline from a tank-truck tank into an underground storage tank ("UST") system. Specifically, the vapor return hose was not connected to capture displaced vapors [30 TEX. ADMIN. CODE §§ 115.221(2) and 115.222(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$850</p> <p>Total Deferred: \$170 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$680</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that as of April 21, 2008, the Respondent implemented procedures for making every employee aware of the purposes and correct operating procedures of the vapor recovery system through company safety meetings, and trained all fuel delivery staff to ensure that the vapor recovery hose is connected before gasoline is delivered from a tank-truck tank into an UST.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

TCEQ

DATES

Assigned 5-May-2008

PCW 8-May-2008

Screening 7-May-2008

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent UNITED PETROLEUM TRANSPORTS, INC.

Reg. Ent. Ref. No. RN103894564

Facility/Site Region 6-El Paso

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 35868

Docket No. 2008-0778-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Judy Kluge

EC's Team Enforcement Team 6

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 10.0% Enhancement Subtotals 2, 3, & 7 \$100

Notes Adjustment for one prior 1660 order and reduction for an environmental management system.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 25.0% Reduction Subtotal 5 \$250

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent came into compliance on April 21, 2008.

Total EB Amounts	\$0	0.0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7

Final Subtotal \$850

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$850

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$850

DEFERRAL

20.0% Reduction Adjustment -\$170

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$680

Screening Date 7-May-2008

Docket No. 2008-0778-PST-E

PCW

Respondent UNITED PETROLEUM TRANSPORTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 35868

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN103894564

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs		0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	Yes	-10%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> Repeat Violator (Subtotal 3)

No.

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Adjustment for one prior 1660 order and reduction for an environmental management system.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 7-May-2008		Docket No. 2008-0778-PST-E		PCW	
Respondent UNITED PETROLEUM TRANSPORTS, INC.		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 35868		<small>PCW Revision April 29, 2008</small>			
Reg. Ent. Reference No. RN103894564					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)		30 Tex. Admin. Code §§ 115.221(2) and 115.222(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description		Failed to control displaced vapors by a vector control or vapor balance system during the transfer of gasoline from a tank-truck tank into an UST system. Specifically, the vapor return hose was not connected to capture displaced vapors.			
		Base Penalty		<input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	x	<input type="text"/>	Percent <input type="text" value="10%"/>

>> Programmatic Matrix

Matrix Notes	Falsification				
	Major	Moderate	Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment		<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>

Violation Events

Number of Violation Events <input type="text" value="1"/>		<input type="text" value="34"/> Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
Violation Base Penalty <input type="text" value="\$1,000"/>		

One quarterly event is recommended based on the documentation of the violation during the March 18, 2008 investigation to the April 21, 2008 corrective action implementation date.

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$0"/>	Violation Final Penalty Total	<input type="text" value="\$850"/>
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$850"/>

Economic Benefit Worksheet

Respondent UNITED PETROLEUM TRANSPORTS, INC.
Case ID No. 35868
Reg. Ent. Reference No. RN103894564
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Mar-2008	21-Apr-2008	0.09	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost ensure that a vapor-tight return line is connected before transferring gasoline into an UST system. The required date is the investigation date and the final date is the date when corrective action was implemented.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN600525547	United Petroleum Transports, Inc.	Classification: AVERAGE	Rating: 31.90
Regulated Entity:	RN103894564	UNITED PETROLEUM TRANSPORTS	Classification: AVERAGE	Site Rating: 45.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	1068030
Location:	12926 MONTANA AVE, EL PASO, TX, 79938		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	May 05, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 05, 2003 to May 05, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Judy Kluge Phone: (817) 588-5825

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 07/21/2003

ADMINORDER 2002-1219-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.5(b)(1)(A)

Description: Failed to ensure that the Desert Hills Car Wash and Convenience Store had a valid, current delivery certificate issued by the TCEQ covering its UST system prior to depositing substance into Desert Hills UST system.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 05/01/2008 (639952)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

Pollution Prevention System non ch. 90 certified November 2000

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
UNITED PETROLEUM
TRANSPORTS, INC.
RN103894564**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0778-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding UNITED PETROLEUM TRANSPORTS, INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent, a fuel distributor headquartered at 12926 Montana Avenue in El Paso, El Paso County, Texas, delivered gasoline into the underground storage tanks ("USTs") located at 6401 South Desert Boulevard in El Paso, El Paso County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 7, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Hundred Fifty Dollars (\$850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Eighty Dollars (\$680) of the administrative penalty and One Hundred Seventy Dollars (\$170) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that as of April 21, 2008, the Respondent implemented procedures for making every employee aware of the purposes and correct operating procedures of the vapor recovery system through company safety meetings, and trained all fuel delivery staff to ensure that the vapor recovery hose is connected before gasoline is delivered from a tank-truck tank into an UST.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As a fuel distributor at the Station, the Respondent is alleged to have failed to control displaced vapors by a vector control or vapor balance system during the transfer of gasoline from a tank-truck tank into an UST system, in violation of 30 TEX. ADMIN. CODE §§ 115.221(2) and 115.222(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 18, 2008. Specifically, the vapor return hose was not connected to capture displaced vapors.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: UNITED PETROLEUM TRANSPORTS, INC., Docket No. 2008-0778-PST-E" to:


Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the fuel delivery operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director


9/4/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

7/3/08
Date

ANDY WALKER

Name (Printed or typed)
Authorized Representative of
UNITED PETROLEUM TRANSPORTS, INC.

VP RISK MANAGEMENT

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

